IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

FAO.No. 138 of 2007()

AGAINST THE JUDGMENT DT.27.3.2007 IN AS.119/2005 of DISTRICT COURT, KOTTAYAM .

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APPELLANT/1ST RESPONDENT/DEFENDANT NO.2

A.ANSARI, S/O AHAMMED KANNUR RAWTHER,
THAKADIYEL HOUSE, PUZHAVATHU MURI,
CHANGANACHERRY TALUK.

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENTS: APPELLANT & RESPONDENTS 2 TO 7- PLAINTIFF & ADDL.
---------- DEFENDANTS 3 TO 8

1. RASHEED, S/O SAITHMOHAMMED,
THOTTUPARAMBIL HOUSE, PUZHAVATHU MURI,
CHANGANACHERRY VILLAGE, DO TALUK.

2. NABEESA UMMERKHAN,
W/O UMMERKHAN, THOTTUPARAMBIL HOUSE,
PERINTHALMANNA P.O., MALAPPURAM DIST.

3. JALEELA D/O UMMERKHAN, OF DO.

4. SHEMEENA D/O UMMERKHAN, DO. DO.

5. LIAKATH ALIKHAN, S/O UMMERKHAN OF DO. DO

6. SHEBEENA D/O UMMERKHAN OF DO. DO.

7. SULFIKAR ALIKHAN,
S/O UMMERKHAN, DO. DO.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 30/05/2007, ALONG WITH FAO NO.139/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, JUDGE.
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F.A.O. No. 138 OF 2007
and
F.A.O. No. 139 OF 2007

Dated this the 30th day of May, 2007
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JUDGMENT

The plaintiffs in O.S.30/97 on the file of Munsiff Court, Changanassery, is the appellant in both these appeals. He was the 2nd defendant in O.S.83/97 filed by the first respondent before the Munsiff Court, Changanassery. The appellant filed a suit for permanent prohibitory injunction. Respondent filed a suit for declaration of title, fixation of boundary and cancellation of a document and for a permanent prohibitory injunction. Both suits were tried jointly. The trial court decreed the suit filed by the appellant and dismissed O.S.83/97 filed by the first respondent. Challenging those decrees and common judgment, the first respondent filed A.S.119/05. He along with respondents 2 to 6 filed A.S.118/05 also. The District Judge heard both appeals together. Before the appellate court appellant filed a petition under Order 41 Rule 27 of C.P.C. to accept additional evidence with documents. The lower appellate court after considering the evidence on record held that evidence on record was not sufficient to resolve the dispute finally. The appellate court was of the opinion that both sides can be given an opportunity to adduce further evidence. The decrees and judgment were set aside and both suits were remanded. Challenging the remand order, these appeals are filed.

2. I have carefully gone through the judgments rendered by the learned District Judge. The learned District Judge found that the plaintiff in

O.S.83/97 has failed to establish that item no.1 is a part of item no.2. It was also found that report and plan submitted by the commissioner is not helpful for deciding the matter. The lower appellate court also found that the first defendant in that suit who was the plaintiff in the other did not produce his title deed. So it was held that it was only just and proper to give an opportunity to both sides to adduce further evidence. There is no finding much less any observation regarding the merits of the case. It is an open remand. It is to be noted that the appellant himself was not satisfied with the evidence adduced before the trial court. That is the reason why he filed a petition under Order 41 Rule 27 of C.P.C. to adduce further evidence. I do not find any reason to interfere with the order of remand. Considering the entire facts, it is only just and proper that the trial court makes every endeavour to dispose of the suit as expeditiously as possible at any rate within three months.

In the result, the appeals F.A.O.138/07 and 139/07 are dismissed. There will a direction to the learned Munsiff, Changanassery to expedite the trial and dispose of the suits as expeditiously as possible at any rate within three months from the date of receipt of a copy of this judgment. The learned Munsiff shall give reasonable opportunity to both sides to adduce further evidence.

K.PADMANABHAN NAIR
JUDGE.

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